

# **Exhibit 3**

**DECLARATION OF ELIZABETH BURNETT**

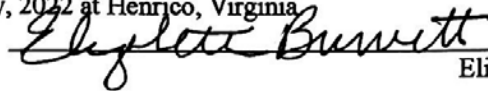
COMES NOW, Elizabeth Burnett, and pursuant to 28 U.S.C. § 1746, declares under penalty of perjury that the following is true and correct:

1. My name is Elizabeth Burnett, and I am over 18 years old. I have personal knowledge of the facts as stated herein.
2. I am the mother of B.B., who is 11 years old and is in sixth grade at Quioccasin Middle School, which is part of Henrico County Public Schools. B.B. has been diagnosed with chronic lung disease and, as a result of medical treatments, is immunocompromised. His lung function is only 50% and he has increased susceptibility for infections. *See Exhibit A* (September 1, 2021 Henrico County Public Schools Homebound Instruction – Medical Certification of Need by Dr. Tiffany Kimbrough). These conditions substantially limit his major life activities, such as breathing and the functions of the respiratory system.
3. These conditions put B.B. higher risk for severe complications if he were to become infected with COVID-19. B.B. is at heightened risk from COVID-19 even after being vaccinated and boosted.
4. One of my other children is diagnosed with autism. He is 11 years old and in sixth grade.
5. During the 2020-2021 school year, B.B. and his brother attended virtual school. Although B.B. was able to maintain his grades and educational progress, his emotional and mental health suffered. B.B.'s brother also participated in the virtual learning program last year, and in the program was unable to access the in-person services required by his IEP. In-person instruction provides the best mode of instruction for my children's educational needs and overall wellbeing.
6. In March 2021, my family chose to enroll B.B. and his brother in in-person school for the 2021-2022 school year, and they are attending school in person right now. Because Quioccasin Middle School currently requires universal masking, B.B. can attend in-person school safely. He wears a KN95 mask at school all day, and during lunch, he removes his mask to eat but remains six feet socially distanced from other students during that time.
7. If the school district no longer required universal masking and there is community transition of COVID-19 above the "low" level, my children's pediatrician has recommended against B.B. attending in person school because of B.B.'s medical condition and the increased infectivity and severity of disease seen in children related to the Omicron variant. He is at-risk for hypoxia and hospitalization with viral infections. *See Exhibit B* (February 7, 2022 Email to Elizabeth Burnett from Dr. Tiffany Kimbrough). Because his brother could infect B.B., we would also have to consider removing him from school.
8. There is no virtual school option available for B.B. or for his brother for the 2021-2022 school year. Even if there was a virtual school option available, it does not provide an equitable education experience for my children. In addition to missing out on the benefits of in-person learning, they will also be excluded from extra-curricular activities while in virtual school.
9. Although Henrico County Public Schools was considering lifting its requirement for universal masking in schools in response to Executive Order 2, as of February 4, 2022, they announced they are maintaining a universal mask requirement because of the Arlington Circuit Court decision that the Governor cannot override the decisions of local school boards with regards to the mask mandate. *See Exhibit C* (
10. However, if Henrico County Public Schools makes masking optional pursuant to Executive Order 2, we will have to choose between sending B.B. and his brother to school where B.B.'s health and safety is at heightened risk or withdrawing them from school and risking their educational progress.
11. I am seeking to have Executive Order 2 blocked so that my school will be able to

require universal masking as necessary to meet its obligations to my children.

I swear under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Dated this 8 day of February, 2022 at Henrico, Virginia

A handwritten signature in cursive script, appearing to read "Elizabeth Burnett", written over a horizontal line.

Elizabeth Burnett

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION**

CHRISTOPHER SEAMAN and ELIZABETH  
ALLISON LYONS, individually and on behalf  
of C.S., a minor; *et al.*

Plaintiffs,

v.

The COMMONWEALTH OF VIRGINIA; *et al.*

Defendants.

Case No. 3:22-cv-00006-NKM

**EXHIBIT A FILED UNDER SEAL**

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION**

CHRISTOPHER SEAMAN and ELIZABETH  
ALLISON LYONS, individually and on behalf  
of C.S., a minor; *et al.*

Plaintiffs,

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The COMMONWEALTH OF VIRGINIA; *et al.*

Defendants.

Case No. 3:22-cv-00006-NKM

**EXHIBIT B FILED UNDER SEAL**

# **Exhibit C**

## Fwd: HCPS Face Mask Update

elizabethhburnett

**REDACTED**

Fri 2/4/2022 5:26 PM

To: Kaitlin Banner

**REDACTED**

\*\*EXTERNAL Email\*\*

Liz Burnett

Begin forwarded message:

**From:** Henrico County Public Schools communication@henrico.k12.va.us

**Date:** February 4, 2022 at 5:16:34 PM EST

**To:** elizabethhburnett

**REDACTED**

**Subject:** HCPS Face Mask Update

**Reply To:** noreply@henrico.k12.va.us

Henrico Families and Staff:

For the last several weeks, HCPS and school divisions across Virginia have managed the complexities of mask requirements and compliance with state law and Governor Youngkin's executive order two.

Today, the Arlington Circuit Court granted a motion for a [temporary restraining order](#) related to the optional masking of children, effective immediately. The Court concluded that the Governor, via his emergency powers, cannot override the decision of local school boards delegated to them under SB 1303. That means that school boards maintain the authority to require masks. To that end, **HCPS will strictly adhere to our universal mask requirement** except during mealtime, when students are outdoors (with appropriate physical distancing), or when they participate in designated athletic activities.

**Recent accommodations made in place of mask use, based on parent choice and the executive order, will end immediately.** Students are expected to adhere to the universal masking requirement, and anyone who refuses to wear a mask will **face disciplinary action** in accordance with the Code of Student Conduct for disruption of the school day.

We understand that not everyone agrees with the court's decision. We all look forward to (and are planning for) the time when masks are no longer needed. However, until then, HCPS remains steadfast in our commitment to using every mitigation strategy available to support the health and safety of student and staff. We are grateful for the collective efforts of our students, parents and employees to implement our safety measures with fidelity for the benefit of all.

We wish your family continued good health and success in the second semester.

Sincerely,

Henrico County Public Schools

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Henrico County Public Schools uses SchoolMessenger to connect with families, students, and staff through e-mail, voice, and text messages. If you received this e-mail in error, or if you wish to be removed from these e-mail communications, you may unsubscribe by clicking [Here](#). If you unsubscribe then you will no longer receive e-mails from the School Messenger service, which means you might miss other important messages about your school(s).

For questions about these messages, first try contacting your school directly. After that, try the Henrico County Public Schools Central Office at (804) 652-3726 during normal business hours.

SchoolMessenger is a notification service used by the nation's leading school systems to connect with parents, students and staff through voice, SMS text, email, and social media.